

103^D CONGRESS
2^D SESSION

S. 2329

To settle certain Indian land claims within the State of Connecticut, and
for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 27 (legislative day, JULY 20), 1994

Mr. DODD (for himself and Mr. LIEBERMAN) introduced the following bill;
which was read twice and referred to the Committee on Indian Affairs

A BILL

To settle certain Indian land claims within the State of
Connecticut, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Mohegan Nation of
5 Connecticut Land Claims Settlement Act of 1994”.

6 **SEC. 2. FINDINGS AND PURPOSES.**

7 (a) FINDINGS.—Congress finds the following:

8 (1) The Mohegan Tribe of Indians of Connecti-
9 cut received recognition by the United States pursu-

1 ant to the administrative process under part 83 of
2 title 25 of the Code of Federal Regulations.

3 (2) The Mohegan Tribe of Indians of Connecti-
4 cut is the successor in interest to the aboriginal en-
5 tity known as the Mohegan Indian Tribe.

6 (3) The Mohegan Tribe has existed in the geo-
7 graphic area that is currently the State of Connecti-
8 cut for a long period preceding the colonial period of
9 the history of the United States.

10 (4) Certain lands were sequestered as tribal
11 lands by the Colony of Connecticut and subsequently
12 by the State of Connecticut.

13 (5) The Mohegan Tribe of Indians of Connecti-
14 cut v. State of Connecticut, et al. (Civil Action No.
15 H-77-434, pending before the United States Dis-
16 trict Court for the Southern District of Connecticut)
17 relates to the ownership of certain lands within the
18 State of Connecticut.

19 (6) Such action will likely result in economic
20 hardships for residents of the State of Connecticut
21 by encumbering the title to lands in the State, in-
22 cluding lands that are not currently the subject of
23 the action.

24 (7) The State of Connecticut and the Mohegan
25 Tribe have executed agreements for the purposes of

1 resolving all disputes between the State of Connecti-
2 cut and the Mohegan Tribe and providing a settle-
3 ment for the action referred to in paragraph (5).

4 (8) In order to implement the agreements re-
5 ferred to in paragraphs (5) and (6) of section 3 that
6 address matters of jurisdiction with respect to cer-
7 tain offenses committed by and against members of
8 the Mohegan Tribe and other Indians in Indian
9 country and matters of gaming-related development,
10 it is necessary for the Congress to enact legislation.

11 (9) The town of Montville, Connecticut, will—

12 (A) be affected by the loss of a tax base
13 from, and jurisdiction over, lands that will be
14 held in trust by the United States on behalf of
15 the Mohegan Tribe; and

16 (B) serve as the host community for the
17 gaming operations of the Mohegan Tribe.

18 (10) The town of Montville and the Mohegan
19 Tribe have entered into an agreement to resolve is-
20 sues extant between them and to establish the basis
21 for a cooperative government-to-government relation-
22 ship.

23 (b) PURPOSES.—The purposes of this Act are as
24 follows:

1 (1) To facilitate the settlement of claims
2 against the State of Connecticut by the Mohegan
3 Tribe.

4 (2) To facilitate the removal of any encum-
5 brance to any title to land in the State of Connecti-
6 cut that would have resulted from the action re-
7 ferred to in subsection (a).

8 **SEC. 3. DEFINITIONS.**

9 As used in this Act:

10 (1) LANDS OR NATURAL RESOURCES.—The
11 term “lands or natural resources” means any real
12 property or natural resources, or any interest in or
13 right involving any real property or natural re-
14 sources, including any right or interest in minerals,
15 timber, or water, and any hunting or fishing rights.

16 (2) MOHEGAN TRIBE.—The term “Mohegan
17 Tribe” means the Mohegan Tribe of Indians of Con-
18 necticut, a tribe of American Indians recognized by
19 the United States pursuant to part 83 of title 25,
20 Code of Federal Regulations, and the State of Con-
21 necticut pursuant to section 47–59a(b) of the Con-
22 necticut General Statutes.

23 (3) SECRETARY.—The term “Secretary” means
24 the Secretary of the Interior.

1 (4) STATE.—The term “State” means the State
2 of Connecticut.

3 (5) STATE AGREEMENT.—The term “State
4 Agreement” means the Agreement between the Mo-
5 hegan Tribe and the State of Connecticut, executed
6 on May 17, 1994, by the Governor of the State of
7 Connecticut and the Chief of the Mohegan Tribe,
8 that was filed with the Secretary of State of the
9 State of Connecticut.

10 (6) TOWN AGREEMENT.—The term “Town
11 Agreement” means the agreement executed on June
12 16, 1994, by the Mayor of the town of Montville and
13 the Chief of the Mohegan Tribe.

14 (7) TRANSFER.—The term “transfer” includes
15 any sale, grant, lease, allotment, partition, or con-
16 veyance, any transaction the purpose of which is to
17 effect a sale, grant, lease, allotment, partition or
18 conveyance, or any event that results in a change of
19 possession or control of land or natural resources.

20 **SEC. 4. ACTION BY SECRETARY.**

21 (a) IN GENERAL.—The Secretary is authorized to
22 carry out the duties specified in subsection (b) at such
23 time as the Secretary makes a determination that—

24 (1) in accordance with the Indian Gaming Reg-
25 ulatory Act (25 U.S.C. 2701 et seq.), the State of

1 Connecticut has entered into a binding compact with
2 the Mohegan Tribe providing for class III tribal
3 gaming operations (as defined in section 4(8) of
4 such Act (25 U.S.C. 2703(8));

5 (2) the compact has been approved by the Sec-
6 retary pursuant to section 11(d)(8) of such Act (25
7 U.S.C. 2710(d)(8)); and

8 (3) pursuant to transfers carried out pursuant
9 to the State Agreement, the United States holds title
10 to lands described in exhibit B of the State Agree-
11 ment in trust for the Mohegan Tribe to be used as
12 the initial Indian reservation of the Mohegan Tribe.

13 (b) PUBLICATION BY SECRETARY.—If the Secretary
14 makes a determination under subsection (a) that the con-
15 ditions specified in paragraphs (1) through (3) of that
16 subsection have been met, the Secretary shall publish the
17 determination, together with the State Agreement, in the
18 Federal Register.

19 (c) EFFECT OF PUBLICATION.—

20 (1) IN GENERAL.—Upon the publication of the
21 determination and the State Agreement in the Fed-
22 eral Register pursuant to subsection (b), a transfer,
23 waiver, release, relinquishment, or other commitment
24 made by the Mohegan Tribe in accordance with the

1 terms and conditions of the State Agreement shall
2 be in full force and effect.

3 (2) APPROVAL BY THE UNITED STATES.—(A)
4 The United States hereby approves any transfer,
5 waiver, release, relinquishment, or other commitment
6 carried out pursuant to paragraph (1).

7 (B) A transfer made pursuant to paragraph (1)
8 shall be deemed to have been made in accordance
9 with all provisions of Federal law that specifically
10 apply to transfers of lands or natural resources
11 from, by, or on behalf of an Indian, Indian nation,
12 or tribe of Indians (including the Act popularly
13 known as the “Trade and Intercourse Act of 1790”;
14 section 4 of the Act of July 22, 1790 (1 Stat. 137,
15 chapter 33)). The approval of the United States
16 made pursuant to subparagraph (A) shall apply to
17 the transfer beginning on the date of the transfer.

18 (d) EXTINGUISHMENT OF CLAIMS.—

19 (1) IN GENERAL.—Subject to subsection (g)
20 and paragraph (3), the following claims are hereby
21 extinguished:

22 (A) Any claim to land within the State of
23 Connecticut based upon aboriginal title by the
24 Mohegan Tribe or any predecessor or successor
25 in interest of the Mohegan Tribe.

1 (B) Any other claim that the Mohegan
2 Tribe may have with respect to any public or
3 private lands or natural resources in Connecti-
4 cut, including any claim or right based on rec-
5 ognized title, including—

6 (i) any claim the Mohegan Tribe may
7 have to the tribal sequestered lands bound-
8 ed out to the Tribe in 1684, consisting of
9 some 20,480 acres lying between the
10 Thames River, New London bounds, Nor-
11 wich bounds and Colchester bounds;

12 (ii) any claim the Mohegan Tribe may
13 have based on a survey conducted under
14 the authority of the Connecticut General
15 Assembly in 1736 of lands reserved and se-
16 questered by the General Assembly for the
17 sole use and improvement of the Mohegan
18 Indian Tribe; and

19 (iii) any claim the Mohegan Tribe
20 may have based on any action by the State
21 carried out in 1860 or 1861 or otherwise
22 made by the State to allot, realLOT, or con-
23 firm any lands of the Mohegan Tribe to in-
24 dividual Indians or other persons.

1 (2) APPROVAL BY THE UNITED STATES.—An
2 extinguishment made pursuant to this subsection
3 shall be deemed to have been made in accordance
4 with all provisions of Federal law that specifically
5 apply to transfers of lands or natural resources
6 from, by, or on behalf of an Indian, Indian nation,
7 or tribe of Indians (including the Act popularly
8 known as the “Trade and Intercourse Act of 1790”;
9 section 4 of the Act of July 22, 1790 (1 Stat. 137,
10 chapter 33)).

11 (e) TRANSFERS.—Subject to subsection (g), any
12 transfer of lands or natural resources located within the
13 State of Connecticut, including any such transfer made
14 pursuant to any applicable Federal or State law (including
15 any applicable treaty), made by, from, or on behalf of the
16 Mohegan Tribe or any predecessor or successor in interest
17 of the Mohegan Tribe shall be deemed to be in full force
18 and effect, as provided in subsection (c)(1).

19 (f) LIMITATION.—

20 (1) IN GENERAL.—Except as provided in para-
21 graph (2) and subject to subsection (g), by virtue of
22 the approval by the United States under this section
23 of a transfer of land or the extinguishment of ab-
24 original title, any claim by the Mohegan Tribe
25 against the United States, any State or political sub-

1 division of a State, or any other person or entity, by
2 the Mohegan Tribe, that—

3 (A) arises after the transfer or extinguish-
4 ment is carried out; and

5 (B) is based on any interest in or right in-
6 volving any claim to lands or natural resources
7 described in this section, including claims for
8 trespass damages or claims for use and occu-
9 pancy,

10 shall, beginning on the date of the transfer of land
11 or the extinguishment of aboriginal title, be consid-
12 ered an extinguished claim.

13 (2) EXCEPTION.—The limitation under para-
14 graph (1) shall not apply to any interest in lands or
15 natural resources that is lawfully acquired by the
16 Mohegan Tribe or a member of the Mohegan Tribe
17 after the applicable date specified in paragraph (1).

18 (g) STATUTORY CONSTRUCTION.—

19 (1) ABORIGINAL INTERESTS.—Nothing in this
20 section may be construed to extinguish any aborigi-
21 nal right, title, interest, or claim to lands on natural
22 resources, to the extent that such right, title, inter-
23 est, or claim that is defined as an excepted interest
24 under section 1(a) of the State Agreement.

1 (2) PERSONAL CLAIMS.—Nothing in this sec-
 2 tion may be construed to offset or eliminate the per-
 3 sonal claim of any individual Indian if the individual
 4 Indian pursues such claim under any law of general
 5 applicability.

6 **SEC. 5. CONVEYANCE OF LANDS TO THE UNITED STATES**
 7 **TO BE HELD IN TRUST FOR THE MOHEGAN**
 8 **TRIBE.**

9 (a) IN GENERAL.—The Secretary shall take such ac-
 10 tion as may be necessary to facilitate the conveyance to
 11 the United States of title to lands described in exhibits
 12 A and B of the State Agreement. Such lands shall be held
 13 by the United States in trust for the use and benefit of
 14 the Mohegan Tribe as the initial Indian reservation of the
 15 Mohegan Tribe.

16 (b) CONSULTATION.—

17 (1) IN GENERAL.—The Secretary shall consult
 18 with the appropriate official of the town of Montville
 19 concerning any tract of land subject to exhibit B of
 20 the State Agreement but not specifically identified in
 21 such exhibit with respect to the impact on the town
 22 resulting from—

23 (A) the removal of the land from taxation
 24 by the town;

1 (B) problems concerning the determination
2 of jurisdiction; and

3 (C) potential land use conflicts.

4 (2) STATUTORY CONSTRUCTION.—Nothing in
5 this Act may affect the right of the town of
6 Montville to participate, under any applicable law, in
7 decisionmaking processes concerning the acquisition
8 of any lands by the Federal Government to be held
9 in trust for the Mohegan Tribe.

10 **SEC. 6. RATIFICATION OF STATE AGREEMENT.**

11 The consent of the United States is hereby given to
12 the following provisions of the State Agreement:

13 (1) Subsections (c) and (d) of section 1, relat-
14 ing to the location of any tribal gaming operation
15 and the conditions of gaming-related development.

16 (2) Section 1(f), relating to payments on real
17 property.

18 (3) Section 1(g), relating to matters of criminal
19 jurisdiction.

20 (4) Section 1(h), relating to gaming-related
21 traffic control jurisdiction.

22 **SEC. 7. RATIFICATION OF TOWN AGREEMENT.**

23 (a) IN GENERAL.—Notwithstanding any other provi-
24 sion of law, the Mohegan Tribe is authorized to make pay-
25 ments to the town of Montville in accordance with the

1 terms of the Town Agreement, subject to modification by
2 mutual agreement of the parties to the Town Agreement.

3 (b) APPROVAL OF TOWN AGREEMENT.—Notwith-
4 standing any other provision of law—

5 (1) as soon as practicable after the date of en-
6 actment of this Act, the Secretary shall approve the
7 Town Agreement; and

8 (2) the Secretary shall approve any subsequent
9 amendments made to the agreement by both the
10 town of Montville and the Mohegan Tribe.

11 **SEC. 8. GENERAL DISCHARGE AND RELEASE OF STATE OF**
12 **CONNECTICUT.**

13 Except as expressly provided in this Act, the State
14 Agreement, or the Town Agreement, this Act shall con-
15 stitute a general discharge and release of all obligations
16 of the State of Connecticut and the political subdivisions,
17 agencies, departments, officers, or employees of the State
18 of Connecticut arising from any treaty or agreement with,
19 or on behalf of, the Mohegan Tribe or the United States
20 as trustee for the Mohegan Tribe.

21 **SEC. 9. EFFECT OF REVOCATION OF STATE AGREEMENT.**

22 (a) IN GENERAL.—If the State Agreement is invali-
23 dated, or if the gaming compact described in section
24 4(a)(1) or any agreement between the State of Connecti-

1 cut and the Mohegan Tribe to implement the compact is
2 invalidated by a court of competent jurisdiction—

3 (1) the transfers, waivers, releases,
4 relinquishments, and other commitments made by
5 the Mohegan Tribe under section 1(a) of the State
6 Agreement shall cease to be of any force or effect;

7 (2) section 4 of this Act shall not apply to the
8 lands, interest in lands or natural resources of the
9 Mohegan Tribe or any of its members, and the title
10 to the lands or interests in lands or natural re-
11 sources shall be determined as if such section were
12 never enacted; and

13 (3) the approval by the United States of prior
14 transfers and the extinguishment of claims and ab-
15 original title of the Mohegan Tribe otherwise made
16 under section 4 shall be void.

17 (b) RIGHT OF MOHEGAN TRIBE TO REINSTATE
18 CLAIM.—

19 (1) IN GENERAL.—If a State Agreement or
20 compact or agreement described in subsection (a) is
21 invalidated by a court of competent jurisdiction, the
22 Mohegan Tribe or its members shall have the right
23 to reinstate a claim to lands or interests in lands or
24 natural resources to which the Tribe or members are

1 entitled as a result of the invalidation, within a rea-
2 sonable time, but not later than the later of—

3 (A) 180 days after the Mohegan Tribe re-
4 ceives written notice of such determination of
5 an invalidation described in subsection (a); or

6 (B) if the determination of the invalidation
7 is subject to an appeal, 180 days after the court
8 of last resort enters a judgment.

9 (2) DEFENSES.—Notwithstanding any other
10 provision of law, if a party to an action described in
11 paragraph (1) reinstates the action during the pe-
12 riod described in paragraph (1)(B)—

13 (A) no defense, such as laches, statute of
14 limitations, law of the case, res judicata, or
15 prior disposition may be asserted based on the
16 withdrawal of the action and reinstatement of
17 the action; and

18 (B) the substance of any discussions lead-
19 ing to the State Agreement may not be admissi-
20 ble in any subsequent litigation, except that, if
21 any such action is reinstated, any defense that
22 would have been available to the State of Con-
23 necticut at the time the action was with-
24 drawn—

25 (i) may be asserted; and

1 (ii) is not waived by anything in the
 2 State Agreement or by subsequent events
 3 occurring between the withdrawal action
 4 and commencement of the reinstated ac-
 5 tion.

6 **SEC. 10. JUDICIAL REVIEW.**

7 (a) JURISDICTION.—Notwithstanding any other pro-
 8 vision of law, during the period beginning on the date of
 9 enactment of this Act and ending on the date that is 180
 10 days after such date, the United States District Court for
 11 the Southern District of Connecticut shall have exclusive
 12 jurisdiction over any action to contest the constitutionality
 13 of this Act or the validity of any agreement entered into
 14 under the authority of this Act or approved by this Act.

15 (b) DEADLINE FOR FILING.—Effective with the ter-
 16 mination of the period specified in subsection (a), no court
 17 shall have jurisdiction over any action to contest the con-
 18 stitutionality of this Act or the validity of any agreement
 19 entered into under the authority of this Act or approved
 20 by this Act, unless such action was filed prior to the date
 21 of termination of the period specified in subsection (a).

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